



Fremont Board of Adjustment
March 24, 2015
Meeting Minutes

Members present: Chairman Doug Andrew, Members John (Jack) Downing, Dennis Howland, Alt Leon Holmes, Sr., and Alt/recording Secretary Meredith Bolduc.
Also present: Selectman Neil Janvrin.

Mr. Andrew opened the meeting at 7:00 pm.

At the November 18, 2014 meeting Mr. Andrew re-designated Alternate Meredith Bolduc to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. That appointment remains in effect.

At the May 27, 2014 meeting Mr. Andrew designated Alternate Leon Holmes, Sr. to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. That appointment remains in effect.

MINUTES

Mr. Downing made the motion to accept the minutes of the February 24, 2015 meeting as written. Motion seconded by Mr. Howland with unanimous favorable vote.

Case #015-001
John Carson, Jr.
67 Gristmill Road
Map 2 Lot 173-13

Present: Katheryn and John Carson, Jr., Kevin Hatch

Mr. Andrew opened this Public Hearing at 7:00 pm and stated that this is a continuation of the February 24, 2015 portion of this Public Hearing and the March 11, 2015 site visit.

SITE VISIT:

Mr. Andrew stated that at 5:00 pm on March 11, 2015 the ZBA conducted a duly noticed site visit at 67 Gristmill Road. Present were owner Jack Carson, ZBA Chairman Douglas Andrew, ZBA Member Jack Downing and Dennis Howland.

The group viewed the location of the foundation and recently constructed house and porch.

The group finished the site visit and left the premise at 5:15 pm.

Mr. Andrew explained the procedure for an Equitable Waiver of Dimensional Requirements and that RSA 674:33-a directs that "When a lot or structure is discovered to be in violation of a physical layout or dimensional requirement, the zoning board of adjustment may grant a waiver only if each of the four findings as outlined in the statute are made:

- (a) lack of discovery;
- (b) good faith error in measurement or calculation;
- (c) no diminution in value of surrounding property; and
- (d) the cost of correcting the mistake outweighs any public benefit."

II. In lieu of the findings required by the board under subparagraphs I (a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

He then read Article IV Section 1 of the current Fremont Zoning Ordinance as it pertains to this case, which reads in part:

Any new structure or extension of existing structure intended for any use shall be set back from the street property line at least fifty (50) feet.

The Board reviewed the timeline from the Fremont Building Official Robert Meade.

- Foundation Certificate timeline chronology that included the following.
 - Aug 7, 2014 septic review
 - Aug 31, 2014 code review
 - Sept 9, 2014 building permit
 - Sept 26, 2014 foundation inspection – first called Cornerstone Survey questioning distance from road
 - Oct 10 called again looking for foundation certificate
(called several more times)
 - Oct 29, 2014 e-mail to Jack (Carson) about having left messages for Cornerstone.
Around this time the road was cut (cul-de-sac removed) and Jack called with a 56' measurement.
 - Nov 17, 2014 sent another e-mail to Jack about Cornerstone and no certification
 - Dec 22, 2014 call from mortgage company questioning how close to road and wetlands
 - Dec 26, 2014 first letter went out looking for certificate
 - Jan 6, 2015 did a walk through of the house
 - Jan 16, 2015 Kevin Hatch meets with Jack

Jan 19, 2015 Jack e-mails that foundation is indeed off and closer than 50' to the road

Jan 20, 2015 second letter (summation) went out

Jan 22, 2015 Foundation Certificate arrived.

The Board reviewed the location plan labeled "Foundation Certification" drawn by Cornerstone Survey Associates and dated January 8, 2015. The plan showed the foundation for the house on the Map 2 Lot 173-13 to be as close as 48.9' and the addition of the porch to be 44.3' from the street property line of Gristmill Road.

It was previously established that the violation was first suspected by the Building Official Bob Meade at the Sept 26, 2014 foundation inspection and Mr. Hatch was contacted by Mr. Meade via phone voice message questioning distance from road. The violation was acknowledged by the owner on Jan 19, 2015.

Mr. Hatch said that he did received messages from Building Official Bob Meade. He said he had originally done the septic design for the original owner. He did not think there was a problem, and thought what he was seeing was the pavement for the new cul-de-sac. Mr. Hatch said the problem originated with the original septic design done by his office which showed the septic setback and the building setback reversed. Mr. Hatch showed on the septic plan that showed the mistake and said he takes full responsibility for the error. He said he was not hired by the new owner until after the violation was suspected.

The Board reviewed the applicants written and oral statements (in *italics*) addressing the four points of criteria (findings) of an Equitable Waiver of Dimensional Requirements as follows.

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

This was intended to meet the setback requirements as shown on the approved subdivision plan but the front setback line was inadvertently erased on the septic design.

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;

This minor encroachment is imperceptible and the front porch adds and attractive country character to the home.

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

Moving the structure is a major expense with no perceptible benefit to the public.

With little more discussion Mr. Andrew called for a vote by the Board Members on each of the four points of criteria for an Equitable Waiver of Dimensional Requirements.

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes
Mr. Holmes	Yes

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner, owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes
Mr. Holmes	Yes

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes
Mr. Holmes	Yes

Approved April 28, 2015

That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

Board's vote:

Mr. Andrew	Yes
Mr. Downing	Yes
Mr. Howland	Yes
Mrs. Bolduc	Yes
Mr. Holmes	Yes

After careful consideration and review by the Board, Mr. Andrew made the motion that, based on the information presented and the results of the Boards vote on the four points of criteria that must be met for approval of an Equitable Waiver of Dimensional Requirements, and pursuant to the location plan labeled "Foundation Certification" drawn by Cornerstone Survey Assoc and dated January 8, 2015 the Fremont Zoning Board of Adjustment grant the requested Equitable Waiver of Dimensional Requirement from Article IV Section 1 of the Fremont Zoning Ordinance to allow a recently constructed existing house and porch at Map 2 Lot 173-13, 67 Gristmill Road, to remain in its current location closer than fifty (50) feet to the street property line of Gristmill Road with the following conditions:

- That no portion of the foundation or porch is closer than 44.3' to the street property line of Gristmill Road.
- That this Equitable Waiver of Dimensional Requirements granted herein pertains to the existing house foundation and porch only and does not extend to any additional improvements on the property.
- This decision shall be recorded with reference to the current deed and shall be included in any subsequent deeds to this parcel or subdivision of this parcel.
- This approval is subject to all other Local, State or Federal permits and approvals that may be required and does not relieve the applicant from the obligation to obtain such other permits.
- RSA 676:17 shall apply.

Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Andrew declared the requested Equitable Waiver of Dimensional Requirements approved.

The applicant was instructed that there is a 30 day appeal period and that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will referenced to the property deed.

At 7:20 pm Mr. Howland made the motion to close this Public Hearing.

Motion seconded by Mr. Downing with unanimous favorable vote.

Katheryn and John Carson, Jr., submitted required recording fees. They and Kevin Hatch left at this time.

Case #015-002
Anne Sloan
300 Main Street
Map 3 Lot 032

Present: Owner Anne Sloan, Attorney Charles Tucker, Matthew Thomas, Maria & William Knee, Ellen & Michael O'Keefe, Neil Janvrin.

Mr. Andrew opened this Public Hearing at 7:30 pm and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 676:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on March 24, 2015 in the Basement Meeting room of the Fremont Town Hall, for Anne Sloan, for property located at 300 Main Street, Map 3 Lot 032 in Fremont, New Hampshire.

The applicant is seeking:

- *Special Exception from Article XI Section E.6.2 of the Fremont Zoning Ordinance to allow multi-family use in the Aquifer Protection District.*
- *Variance from the following Articles/sections of the Fremont Zoning Ordinance:*
- *Article IV Section 1 – Setback requirement*
- *Article IV Section 2 – Frontage requirement*
- *Article IV Section 5 – 30% lot occupied by buildings, parking areas, driveways, septic systems and associated leaching fields.*
- *Article XI Section E.1 – Lot size requirement*
- *Article XI Section E.3 – 10% if the lot may be impervious surface.*

You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.

Mr. Andrew reported that at the March 10, 2015 Town Vote Article IX Section E.6.2 was amended so that businesses, multi-family residential development, and sand and gravel excavation that are not prohibited by the ordinance and that would not be likely to impact the Aquifer Protection District are now under the purview of the Planning Board in conjunction with Site Plan Review process rather than the Zoning Board of Adjustment. Therefore a Special Exception to this article is no longer necessary. Attorney Tucker withdrew the application for the Special Exception.

Mr. Andrew stated that this hearing was noticed on March 4, 2015 at the Fremont Post Office and Fremont Town Hall and in the March 9, 2015 edition of the Manchester Union Leader Newspaper. The applicant and all abutters were notified via certified mail on March 4, 2015 and all returns have been received. The application consisted of a cover letter of intent, six sets of plans, a current abutters list, proper check amount and an August 29, 2014 (revised September 9, 2014) letter of denial/referral from the Fremont Building Official/Code Enforcement Officer.

Mr. Andrew explained the purpose of the Board. He explained that a Variance is a waiver or relaxation of a particular requirement of an ordinance when strict enforcement would cause undue hardship because of circumstances unique to the property. There are five conditions which must be met in order for a Variance to be granted including:

- granting the variance would not be contrary to the public interest
- the use is not contrary to the spirit of the ordinance
- granting the variance would do substantial justice
- the proposed use would not diminish surrounding property values
- literal enforcement of the Ordinance would result in unnecessary hardship to the owner

Mr. Tucker said in this case they are looking for permission to have three families in the house. It is a use variance and the way the ordinance is interpreted in Fremont the applicant needs variances for several sections of the zoning ordinance. He suggested that the Board vote on all variance requests at once rather than individually.

Mrs. Sloan submitted a photo of the building. She said that when her parents purchased it in 1978 it was a three-family building. Her sister lived in the upper unit and eventually took over middle unit and then the basement unit for a school. Mrs. Sloan said she would now like to convert the building back to residences on all three floors, multi-family dwelling unit. She said the lot is only 67' x 221' and parking is an issue and she would be in a better position to accommodate use of this building relative to parking if it were apartments rather than a business. She said she does not know the size of the septic tank, but it has never given a problem. Mrs. Sloan reiterated that she does not think it is feasible to use the building for a business so she would like to change it back to multi-residential (3 units).

In answer to questions by Mr. Holmes Mrs. Sloan indicated parking spaces on the photo she had submitted. She said the middle and bottom floors have one-bedroom each and the top floor unit has 3 bedrooms, for a total of 5 bedrooms in the building. There was a conversation relative to a room without a closet not being considered a bedroom. There was a conversation relative to the septic system size vs. number of bedrooms.

The Board reviewed a hand drawn plan of the 10,890 sf parcel (67' x 221'), dated September 17, 2014, that Mrs. Sloan submitted with the application. The plan showed the locations of the existing house, garage, well, septic and 4 parking spaces. The Board received and read the February 27, 2015 cover letter of intent submitted by Attorney Charles Tucker. In this cover letter Mr. Tucker explained that the history of the building at 300 Main Street is that some levels of the have been used for many purposes including a three-family residence, the Town Post Office, various retail shops, pool hall, barber shop. In 1983 the lower level of the building was converted to a kindergarten and in 1986 the street level of the building was added to the kindergarten. There remains an apartment in the upper level of the building. None of the three kitchens have been removed. Mrs. Sloan wishes to return the use of the building to its pre-existing nonconforming use as a three-family dwelling.

Mr. Tucker addressed the 5 conditions of a Variance (*italics*).

1. Granting the variance would not be contrary to the public interest because:

The use as a multi-family dwelling will be far less intense than the use of a day care facility which has the capacity to care for up to 75 children with 5 staff people over the course of a typical the day.

2. The use is not contrary to the spirit of the ordinance because:

The use is consistent with the spirit of the ordinance. The applicant does not propose any exterior changes to the property and it is consistent with the neighborhood which is scattered with dwellings that accommodate more than one dwelling unit. The location of the building is in an old town center which has everything ...the spirit of the ordinance is observed.

3. Granting the Variance would do substantial justice because:

Justice here would be to allow this property to revert back to a 3-family.

The variance will do no harm to the public at large. Not granting the variance will create a financial hardship on the applicant as the dwelling is too large to accommodate a single family use in this neighborhood.

4. The proposed use would not diminish surrounding property values because:

It would be better for surrounding properties as apartment house rather than a school. Given the existing conditions of the property and existing surrounding uses, there will be no recognizable change in the property and therefore there will be no diminution in the values of surrounding properties.

5. Literal enforcement of the Ordinance would result in unnecessary hardship to the owner.

Because of special conditions of the property that distinguish it from other properties in the area: *The condition of the property is its permitted use as a school.*

(A)

(i) There is no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property:

There is no risk to the town by allowing the house to revert to a 3-family property. *The general public purpose of the ordinance is to "promote the health, safety, convenience and general welfare of the Town of Fremont and to secure efficiency and economy in the process of developing the Town and keeping it an attractive place in which to live" the applicant proposes no significant changes to the exterior of the property, keeping with the historic nature of this area of Town, and there will be no risk to the health, safety, convenience and general welfare of the Town by granting the variance. Granting this variance will allow the property to revert to its historic use in the center of Town and will not change the nature of the neighborhood.*

and

(ii) The proposed use is a reasonable one.

The property is an existing lot of record that has historically been used for multi-family use or a mixed residential/commercial use. The property has never been used as a single family home and it was not constructed to accommodate single family use. It is unreasonable that

this property be forced to single family use where that has never been the case and where its historic use has always been as multi-family or mixed use. It is also impractical to maintain the business use of the property where there is little parking to accommodate any type of business use and a fairly new office complex nearby with significant parking and many units of which remain vacant.

Matthew Thomas spoke about the history of the building having been built in 1891 and used as a barber shop, candy store and the Fremont Post Office with an apartment on the upper level. He noted that this building escaped a fire in 1910 that took several surrounding buildings and is architecturally important and it would be important to preserve from that era. He added that in 1973 when it ceased being used as the Post Office it was converted to 3 apartments until the school was put in. He said he approves the 3-apartment use stating that it would be very difficult to get parking for that property to accommodate a business.

Maria Knee, Mrs. Sloan's sister, said she owns the school that is in the building, she lived on the top floor when there were 2 other tenants. She described the unit and said she was aware of her parent's intent to purchase a 3-apartment building. She started a preschool and eventually took over two of the units of the building. She said she has always considered that it was a school within an apartment. She said the demand for private preschool has decreased with the introduction of public kindergarten.

Mrs. Knee submitted a letter from her brother Mark Ragonese, who is a direct abutter, in support of the granting of the variances from article/sections of the Fremont Zoning Ordinance, to allow a multi-family use for the property.

Mrs. Knee said her family has strong ancestral ties to the property.

Michael O'Keefe, a direct abutter, spoke in support of granting of the variances to allow the 300 main street property to revert to a 3-apartment building.

Comment sheets have been received from (comments in *italics*):

Building/Code Enforcement Official: *My concerns would be bringing back this use after 26 years and making these units safe by today's codes.*

Health Officer: *No concerns as long as this is a safe, healthy environment for tenants.*

Fire Chief: *Egress is a big concern. This will be considered a multi-family building and have to meet all the required codes.*

Police Chief: *No issue*

Road Agent: *May want to check with State Highway about parking*

A site visit was discussed. At 8:25 pm Mr. Downing made the motion to continue this Public Hearing to 6:00 pm on Thursday April 9, 2015 at the property at 300 Main Street for the purpose of a site visit, and to 7:00 pm on April 28, 2015 at the Fremont Town Hall.

Motion seconded by Mr. Andrew with unanimous favorable vote.

ZBA Meeting Minutes - 03-24-15
Approved April 28, 2015

A notice will be posted for the site visit.

LEGISLATIVE BILLS

The following bill was among those introduced for the 2014 Legislative Session that Mrs. Bolduc followed.

House Bill 114: This bill requires a subdivider to deed a right of way to an abutting owner of property with no legal access to a public way.
Did not pass.

CORRESPONDENCE

There was no incoming correspondence received.

At 8:35 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Howland with unanimous favorable vote.

Next meeting: scheduled for April 28, 2015.

Respectfully submitted,

Meredith Bolduc,
Land Use AA/Recording Secretary